

filing of this appeal, pursuant to the Federal Employees' Compensation Act³ (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board lacks jurisdiction over the merits of this case.

ISSUE

The issue is whether OWCP properly denied appellant's request for reconsideration of the merits of her claim, pursuant to 5 U.S.C. § 8128(a).

FACTUAL HISTORY

On March 1, 2019 appellant, then a 60-year-old medical supply technician, filed a traumatic injury claim (Form CA-1) alleging that on February 26, 2019 she injured her legs, hips, back, and shoulders when she slipped and fell on a greasy and wet floor while carrying metal trays while in the performance of duty.⁴ She did not stop work.

Appellant underwent diagnostic testing. An April 3, 2019 left shoulder x-ray scan revealed mild degenerative changes at the acromioclavicular (AC) joint. A right shoulder x-ray scan was unremarkable. A cervical spine computerized tomography (CT) scan revealed moderate right foraminal stenosis at C3-4 and multiple degenerative grade 1 subluxations in the cervical and upper thoracic spine.

In an April 5, 2019 report, Dr. Robert Reppy, an osteopath specializing in family medicine, recounted that on February 26, 2019 appellant slipped on a concrete floor and fell on her head, neck, shoulders, low back, and knees at work. He noted appellant's complaints of neck and bilateral knee pain. Dr. Reppy discussed appellant's diagnostic test results, provided examination findings, and diagnosed aggravation of existing low back pain, degenerative disc disease at C5-6 and C6-7, foraminal stenosis at C3-4, thoracic spine subluxation at multiple levels, and suspected meniscus tear of the left knee. He also provided range of motion, comparative muscle report, pinch/grip test, and lift strength evaluation reports dated April 8, 2019.

On April 4, 2019 appellant accepted a full-time, light-duty job offer.

An April 17, 2021 electromyography (EMG) and nerve conduction velocity (NCV) study revealed abnormal findings of the upper extremities, which suggested the presence of left T1 radiculopathy.

³ 5 U.S.C. § 8101 *et seq.*

⁴ OWCP assigned the claim OWCP File No. xxxxxx806. Appellant has two previously-accepted traumatic injury claims. Under OWCP File No. xxxxxx662, OWCP accepted that appellant sustained a right hip contusion causally related to a July 10, 2006 employment incident. Under OWCP File No. xxxxxx937, it accepted a closed fracture of the upper and lower end of the left and right fibula condition as causally related to a June 18, 2017 employment incident. Appellant also has a prior traumatic injury claim under OWCP File No. xxxxxx139 alleging left shoulder, upper and lower back, left hip, and lower legs injuries due to a March 22, 2017 employment incident. OWCP denied the claim, finding that the evidence of record was insufficient to establish that the March 22, 2017 incident occurred as alleged. It has administratively combined OWCP File Nos. xxxxxx662, xxxxxx937, xxxxxx139, and xxxxxx806 with the latter claim as the master file.

In an April 25, 2019 report, Dr. Markus Kornberg, a Board-certified orthopedic surgeon, indicated that he evaluated appellant for multiple symptoms related to a fall that she had at work on February 26, 2019. On physical examination of the cervical spine, he reported tenderness of the paracervicals and the trapezius and limited range of motion (ROM) testing. Examination of appellant's lumbar spine revealed tenderness of the paraspinal region at L5, tenderness of the paraspinal region at L4 on the left, and limited ROM. Dr. Kornberg diagnosed low back pain and lumbosacral spondylosis without myelopathy. He indicated that appellant had preexisting lumbar issues and opined that she suffered an exacerbation of her preexisting condition. Dr. Kornberg also diagnosed cervical spondylosis without myelopathy. He reported that appellant had mechanical cervical neck pain with significant preexisting condition and opined that she suffered "temporary exacerbation of recent traumatic insult." Dr. Kornberg further diagnosed left knee pain and explained that appellant suffered "traumatic insult to the left knee with resultant bruising."

In a May 16, 2019 development letter, OWCP informed appellant of the deficiencies of her claim. It advised of the type of factual and medical evidence necessary to establish her claim and provided a questionnaire for her completion. OWCP afforded appellant 30 days to respond.

Appellant submitted additional reports by Dr. Reppy dated May 3 and June 7, 2019. Dr. Reppy discussed appellant's diagnostic test results and provided physical examination findings. He diagnosed left knee chondromalacia, cervical stenosis, thoracic spine subluxation at multiple levels, and aggravation of preexisting low back pain due to intervertebral discs. Dr. Reppy completed a June 7, 2019 duty status form report (Form CA-17) indicating that appellant could work full-time, modified-duty.

Appellant submitted an emergency room report dated April 3, 2019 by Dr. Elizabeth Janevski, an emergency medicine physician, who recounted appellant's complaints of severe neck and upper back pain following a fall in late February. Dr. Janevski reported that physical examination of appellant's upper back demonstrated tenderness over the bilateral paraspinal region of the upper back, shoulders, and lateral neck. Range of motion was limited due to pain. Dr. Janevski indicated that a cervical spine CT scan showed degenerative narrowing, but no acute pathology. She diagnosed muscle spasms of the neck and shoulder region.

By decision dated June 14, 2019, OWCP denied appellant's traumatic injury claim, finding that the evidence of record was insufficient to establish that the incident occurred as alleged. Thus, it concluded that the requirements had not been met to establish an injury as defined by FECA.

On July 12, 2019 appellant, through counsel, requested an oral hearing before a representative of OWCP's Branch of Hearings and Review. A telephonic hearing was held on November 8, 2019. Appellant described her previous injuries to her neck, back, hips, and left shoulder and prior workers' compensation claims.

In a November 8, 2019 report, Dr. Reppy noted no changes in appellant's cervical range of motion. He diagnosed cervical stenosis, thoracic spine subluxation at multiple levels, left knee chondromalacia, left shoulder degenerative joint disease at the AC joint, and displacement of lumbar spine intervertebral discs.

By decision dated December 20, 2019, OWCP's hearing representative modified the June 14, 2019 decision to accept that the February 26, 2019 incident occurred as alleged and that medical conditions were diagnosed. However, the claim remained denied as the medical evidence of record was insufficient to establish causal relationship between the diagnosed conditions and the accepted employment incident.

On December 20, 2020 appellant, through counsel, requested reconsideration. Counsel argued that appellant's claim should be accepted based on Dr. Reppy's reports because he had treated appellant for her other work-related injuries and had diagnosed aggravation of cervical and lumbar spondylosis.

Appellant submitted the April 3, 2019 diagnostic examination reports of the lumbar spine and bilateral shoulders, the April 17, 2019 EMG/NCV study, and Dr. Kornberg's April 25, 2019 report and June 7, 2019 Form CA-17 report, which were previously reviewed.

Appellant also submitted radiograph reports dated February 28, 2019. A bilateral hip radiograph showed mild femoracetabular joint space narrowing bilaterally and no acute displaced fractures. A bilateral knee radiograph demonstrated very mild degenerative change. A lumbar spine radiograph revealed mild degenerative changes at L5-S1.

OWCP received an April 3, 2019 work capacity evaluation form (Form OWCP-5c) from Dr. Kornberg who noted a diagnosis of exacerbation of cervical and lumbar spondylosis.

Appellant also submitted a December 20, 2019 report by Dr. Reppy under OWCP File No. xxxxxx937. Dr. Reppy indicated that he treated appellant for complaints of low back pain radiating to the bilateral legs after she fell down last Sunday. He provided examination findings and diagnosed status post right fibula fracture, bilateral tarsal tunnel syndrome, lumbar degenerative disc disease, lumbar radiculopathy at L5 root and S1 root, and mononeuritis of the right tibial. Appellant provided additional reports by Dr. Reppy dated January 24, 2020 through February 5, 2021 regarding medical treatment for her lumbar and right lower extremity conditions.

By decision dated February 1, 2021, OWCP denied appellant's request for reconsideration of the merits of the claim pursuant to 5 U.S.C. § 8128(a).

LEGAL PRECEDENT

Section 8128(a) of FECA vests OWCP with discretionary authority to determine whether to review an award for or against compensation. The Secretary of Labor may review an award for or against compensation at any time on his own motion or on application.⁵

To require OWCP to reopen a case for merit review pursuant to FECA, the claimant must provide evidence or argument that: (1) shows that OWCP erroneously applied or interpreted a

⁵ 5 U.S.C. § 8128(a); *see D.G.*, Docket No. 20-1203 (issued April 28, 2021); *L.D.*, Docket No. 18-1468 (issued February 11, 2019); *see also V.P.*, Docket No. 17-1287 (issued October 10, 2017); *D.L.*, Docket No. 09-1549 (issued February 23, 2010); *W.C.*, 59 ECAB 372 (2008).

specific point of law; (2) advances a relevant legal argument not previously considered by OWCP; or (3) constitutes relevant and pertinent new evidence not previously considered by OWCP.⁶

A request for reconsideration must be received by OWCP within one year of the date of OWCP's decision for which review is sought.⁷ If it chooses to grant reconsideration, it reopens and reviews the case on its merits.⁸ If the request is timely, but fails to meet at least one of the requirements for reconsideration, OWCP will deny the request for reconsideration without reopening the case for review on the merits.⁹

ANALYSIS

The Board finds that OWCP properly denied appellant's request for reconsideration of the merits of her claim pursuant to 5 U.S.C. § 8128(a).

On reconsideration, appellant did not show that OWCP erroneously applied or interpreted a specific point of law. Moreover, she did not advance a relevant legal argument not previously considered by OWCP. As such, appellant is not entitled to review of the merits of her claim based on the first and second above-noted requirements under section 10.606(b)(3).¹⁰

In support of her request for reconsideration, appellant submitted additional medical evidence, including February 28, 2019 radiograph reports, Dr. Kornberg's April 3, 2019 Form OWCP-5c, and Dr. Reppy's reports dated December 20, 2019 through February 5, 2021. While this medical evidence is new, it is not relevant because it does not address the underlying issue of the present case, *i.e.*, whether appellant has established causal relationship between the accepted February 26, 2019 employment incident and her diagnosed medical conditions. The Board notes that the submission of evidence that does not address the particular issue involved does not constitute a basis for reopening a case.¹¹ Moreover, appellant also submitted April 3, 2019 diagnostic examination reports of the lumbar spine and bilateral shoulders, an April 17, 2019

⁶ 20 C.F.R. § 10.606(b)(3); *see P.M.*, Docket No. 20-0780 (issued November 24, 2020); *J.W.*, Docket No. 19-1795 (issued March 13, 2010); *see also L.G.*, Docket No. 09-1517 (issued March 3, 2010); *C.N.*, Docket No. 08-1569 (issued December 9, 2008).

⁷ *Id.* at § 10.607(a). The one-year period begins on the next day after the date of the original contested decision. For merit decisions issued on or after August 29, 2011, a request for reconsideration must be received by OWCP within one year of OWCP's decision for which review is sought. Federal (FECA) Procedure Manual, Part 2 -- Claims, *Reconsiderations*, Chapter 2.1602.4 (September 2020). Timeliness is determined by the document receipt date of the request for reconsideration as indicated by the received date in the Integrated Federal Employees' Compensation System (iFECS). *Id.* at Chapter 2.1602.4b.

⁸ *Id.* at § 10.608(a); *see F.V.*, Docket No. 18-0230 (issued May 8, 2020); *M.S.*, 59 ECAB 231 (2007).

⁹ *Id.* at § 10.608(b); *see B.S.*, Docket No. 20-0927 (issued January 29, 2021); *E.R.*, Docket No. 09-1655 (issued March 18, 2010).

¹⁰ *Id.* at § 10.606(b)(3); *G.K.*, Docket No. 20-1026 (issued December 11, 2020); *D.T.*, Docket No. 20-0456 (issued September 1, 2020).

¹¹ *D.C.*, Docket No. 19-0873 (issued January 27, 2020); *E.G.*, Docket No. 18-0270 (issued August 24 2018); *Alan G. Williams*, 52 ECAB 180 (2000); *Jacqueline M. Nixon-Steward*, 52 ECAB 140 (2000).

EMG/NCV study report, and Dr. Kornberg's April 25, 2019 report and June 7, 2019 CA-17 form report, which were previously reviewed. The Board has held that the submission of evidence which duplicates or is substantially similar to evidence already in the case record does not constitute a basis for reopening a case.¹² Therefore, for the above reasons, appellant also failed to satisfy the third requirement under 20 C.F.R. § 10.606(b)(3).¹³

The Board thus finds that appellant has not met any of the requirements of 20 C.F.R. § 10.606(b)(3). Pursuant to 20 C.F.R. § 10.608, OWCP properly denied merit review.

CONCLUSION

The Board finds that OWCP properly denied appellant's request for reconsideration of the merits of her claim pursuant to 5 U.S.C. § 8128(a).

ORDER

IT IS HEREBY ORDERED THAT the February 1, 2021 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: March 8, 2022
Washington, DC

Alec J. Koromilas, Chief Judge
Employees' Compensation Appeals Board

Patricia H. Fitzgerald, Alternate Judge
Employees' Compensation Appeals Board

Valerie D. Evans-Harrell, Alternate Judge
Employees' Compensation Appeals Board

¹² *S.W.*, Docket No. 18-1261 (issued February 22, 2019); *E.M.*, Docket No. 09-39 (issued March 3, 2009); *D.K.*, 59 ECAB 141 (2007).

¹³ *See D.J.*, Docket No. 21-0371 (issued November 24, 2021).